

## REMARKS

Reconsideration and allowance of the subject application are respectfully solicited.

Claims 1, 6 through 10, and 15 through 22 are pending, with Claims 1 and 10 being independent. Claims 1, 9, 10, and 21 have been amended.

Claims 1, 6 through 10, and 15 through 22 were rejected under 35 U.S.C. § 112, 1<sup>st</sup> paragraph, for lack of written description on the grounds that the “audio encoding control unit” is not supported and that the closest support is the audio data encoding unit 2801 that includes the encoders 2902 and 2903. All rejections are respectfully traversed, and are submitted to have been obviated by the amendment of the claims in a manner earnestly believed to avoid the grounds of rejection, viz, the claim has been amended to recite an -- audio encoding unit-- or --audio encoding step-- which finds support at, e.g., p. 27, line 15 through p. 29, line 17 and Figs. 28-29 (see audio data encoding unit 2801 that includes encoders 2902 and 2903, for example). In view of the foregoing, Applicant respectfully submits that the artisan would have thought that Applicant was in possession of the claimed invention, *in haec verba* supported not being required. MPEP 2163.02, 2163.04. Therefore, written description under 35 U.S.C. § 112, 1<sup>st</sup> paragraph, is present.

Claims 1, 6 through 10, and 15 through 22 were rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, as being incomplete for omitting essential steps on the grounds that it is not recited what happens when the image encoding setting is not set. All rejections are respectfully traversed, and are submitted to have been obviated by the amendment of the claims in a manner earnestly believed to avoid the grounds of rejection, viz, the claims now

recite that which the Official Action stated was omitted. Furthermore, Applicant respectfully submits that nothing essential has been omitted; indeed, there is no requirement that there be interdependency between the elements of the claimed device, and there is no requirement that all the elements operate concurrently toward the desired result. MPEP 2172.01. Applicant also respectfully believes that the Official Action has not identified how or why any allegedly omitted relationships render the claims unclear.

Claims 1, 6 through 9, and 21 again were rejected under 35 U.S.C. § 101 as being non-statutory. All rejections are respectfully traversed. The Official Action states that there is no claimed element that conveys that Claim 1 is not software. Applicant respectfully traverses the foregoing since the preamble expressly says “*apparatus*”, not software or program, and since the claim recites several --encoders-- encoding data input by the input unit, as a result of which the claim is not directed solely to software. Whether or not the apparatus may utilize software does not disqualify it from constituting statutory subject matter, since the claim is not directed *solely* to software. Applicant submits that the claims are limited to a practical application in the technological arts; and that the claimed invention is not a natural phenomenon, abstract idea, law of nature, “descriptive material”, or “mere manipulation of abstract ideas”. MPEP 2106.

The dependent claims are also submitted to be patentable because they set forth additional aspects of the present invention and are dependent from independent claims discussed above. Therefore, separate and individual consideration of each dependent claim is respectfully requested.

### REQUEST FOR ENTRY OF AMENDMENT

This Amendment After Final Rejection is an earnest attempt to advance prosecution and reduce the number of issues, and is believed to clearly place this application in condition for allowance. Furthermore, Applicant respectfully submits that a full appreciation of these amendments will not require undue time or effort given the Examiner's familiarity with this application. Moreover, this Amendment was not earlier presented because Applicant earnestly believed that the prior Amendment placed the subject application in condition for allowance. Accordingly, entry of this Amendment under 37 C.F.R. § 1.116 is respectfully requested.

### CONCLUSION

Applicant submits that this application is in condition for allowance, and a Notice of Allowance is respectfully requested.

Applicant's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

/Daniel S. Glueck/  
Daniel S. Glueck  
Attorney for Applicant  
Registration No. 37,838

FITZPATRICK, CELLA, HARPER & SCINTO  
1290 Avenue of the Americas  
New York, New York 10104-3800  
Facsimile: (212) 218-2200

DSG/tjr

FCIS\_WS 4592958v1